IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.49 OF 2006

IN

APPEAL NO.6 OF 2005

IN

NOTICE OF MOTION NO.1407 OF 2002

IN

SUIT NO.648 OF 1986

Mohamed Husein Khairendesh ...Petitioner.

vs.

Mohamed Hussein s/o. Mohamed
Ali Mojeznama Haideri. ...Respondent.

Mr.Zaidy i/b. Zaidy & Co., for Petitioner.

Mr.Vipin Kamdi i/b. J.R.Chomal, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 20th June,2007.

P.C.:-

1. By this petition the petitioner alleges that the respondent has committed willful breach of the order passed by the Division Bench in Appeal no.6 of 2005 dated 3.3.2005. There were several directions issued by the Division Bench in that order. One of the directions was that the respondent was directed to deposit an amount of Rs.3,04,000/- within a period of twelve weeks from the date of the order. The respondent admits that though the order was passed by the Division Bench in the presence of the respondent, he has not deposited the amount. The explanation that has been given for not depositing the amount, firstly is that he could not arrange the amount within a period of twelve weeks due to financial difficulty and the next is that he has deposited the amount of about Rs.7,00,000/- in relation to

the same premises in some other suit. He applied for withdrawal of that amount so that part of the amount could be deposited pursuant to the order of the Division Bench but he could not withdrawn the amount. He, however, stated that he is willing to deposit the amount if he is given time.

2. I have heard the learned Counsel appearing for both the sides. There is no dispute in this case that the clear order made by the Division Bench has been breached by the respondent. The reason given by him for not complying with the order is incapable of being accepted. Though it was argued before me that the amount was not deposited because the financial condition of the respondent is not good. When I asked the learned Counsel about it, the learned counsel appearing for respondent has not been able to show such averments in the reply. It is, thus, clear that the respondent has willfully

disobeyed the order of the Division Bench. It was submitted that the respondent has tendered an unconditional apology and that apology should be accepted. In my opinion, the apology tendered is not genuine. In the order of the Division Bench dated 3.3.2005 there was a direction to deposit the money within a period of 12 weeks. If for any reason the respondent was not in a position to deposit that amount within the stipulated period, his remedy was to approach the Division Bench for extension of time. The present contempt petition has been filed in the month of May,2006 and the respondent was served. Still the respondent did not deposit the amount. No acceptable explanation is given as to why the amount was not deposited after the contempt petition was filed. This contempt petition was admitted for final hearing by order dated 22.1.2007. Even, thereafter no attempt was made to deposit the amount. There was a bailiff report filed in the Court after the petition was

admitted stating that when the bailiff visited the residence of the respondent for service of notice on him, he was informed that the respondent is absent and that he is out of station. The petitioner filed an affidavit in this Court stating that the respondent was at his residence at the relevant time and he was trying to avoid the service. The Advocate who was appearing for the respondent also remained absent. Therefore, by order dated 4.6.2007 the Court was required to issue a bailable warrant against the respondent to procure his presence before the Court. This overall conduct of the respondent shows that the apology tendered by him is not genuine and has been tendered by him only to avoid the punishment being imposed on him. Perusal of the record shows that the conduct of the respondent is of such nature that it substantially interferes with the due course of justice. If the litigants are permitted to disregard the order made by the Court fixing time

limit for complying with the order, without approaching the court to seek extension of time, in my opinion, the system itself will not be able to function effectively. In these circumstances, therefore, in my opinion, it is necessary in this case to sentence the respondent to undergo simple imprisonment. The respondent is, thus, held guilty of having committed civil contempt of this Court and he is sentenced to undergo simple imprisonment for a period of one month and to pay fine of Rs.2000/-, and also to pay cost of this petition to the petitioner. The cost is quantified at Rs.20,000/-.

3. The respondent has stated that the respondent will deposit the amount of Rs.3,04,000/- with the Prothonotary & Sr.Master of this Court, with interest, and that he will do that within a period of 12 weeks. In this view of the matter therefore, the order imposing sentence is suspended for a period of twelve

weeks from today. After the respondent deposits the amount of Rs.3,04,000/- with interest at the rate of 9% per annum with effect from 3.3.2005 till the date of deposit, the order imposing sentence shall stand cancelled. The order imposing sentence will remain suspended for a period of twelve weeks from today.

4. In case, the respondent fails to deposit the amount as directed above, the order imposing the sentence will come into force. The petition is disposed of.